

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1, 6, 7, and 22-24 are pending in the present application. No claims have been amended, no claims have been canceled, and no claims have been added.

In the outstanding Office Action, Claims 1, 6, 7, and 22-24 were rejected under 35 U.S.C. § 103(a) as unpatentable over Aija (U.S. Patent No. 6,928,579) in view of Schoenthal (U.S. Patent No. 7,111,194). This rejection is respectfully traversed.

An inventor affidavit under 37 CFR 1.131 is submitted with this response along with a copy of the invention disclosure statement submitted by the inventor to EDS and signed and dated by the inventor as well as by two witnesses, Mr. Toby Gerhart and Mr. John Norsworthy. The invention was conceived and reduced to practice before the filing date of the Schoenthal reference. An application for Letters Patent was prepared and filed with the United States Patent and Trademark Office without undue delay taking sufficient time to ensure that the matter was described and claimed accurately. Therefore, Schoenthal is not prior art for the present application.

As stated in M.P.E.P. §2143, a basic requirement for a *prima facie* case of obviousness is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. Aija, as the only remaining cited reference that qualifies as prior art, does not teach or suggest the features of “determining whether the data processing system can boot from the back-off device, and responsive to a determination that the data processing system cannot boot from the back-off device, determining a reason for the inability of the data processing system to boot from the back-off device” nor does it teach or suggest “responsive to a determination that the upgrading was successful, remirroring the root device by setting a volume manager to use plexes on the back-off device as source plexes of volumes and rebooting the data processing system using the back-off device;” as acknowledged by the Examiner (see Office Action dated May 3, 2007, p. 4) and as required by claims 1 and 22. Thus, the applicant respectfully submits

the outstanding Office Action has not created a *prima facie* case of obviousness with regard to independent Claims 1 and 22, and the claims dependent therefrom.

Accordingly, it is respectfully requested this rejection be withdrawn. Therefore, claims 1, 6, 7, and 22-24 are not rendered obvious and are in condition for allowance.

CONCLUSION

In light of the arguments set forth above, Applicant respectfully submits that the Application is now in allowable form. Accordingly, Applicant respectfully requests consideration and allowance of the currently pending claims.

It is believed that no additional fees are due at this time. If this is incorrect, Applicants hereby authorize the Commissioner to charge any fees, other than issue fees, that may be required by this paper to Deposit Account No. 07-0153. The Examiner is respectfully requested to call Applicant's Attorney for any reason that would advance the current application to issue. Please reference Attorney Docket No. 119166.001023.

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Respectfully submitted,
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